

Discretions Policies for Scheme Employers in Scotland from 1 April 2015 (version 1.1)

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Introduction

1. The Local Government Pension Scheme (LGPS) in Scotland is being amended from 1 April 2015 so that benefits accruing for service after 31 March 2015 will accrue on a Career Average Revalued Earnings (CARE) basis, rather than on a final salary basis.
2. The provisions of the CARE scheme, together with the protections for members' accrued pre 1 April 2015 final salary rights, are contained in the Local Government Pension Scheme (Scotland) Regulations 2014 and the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.
3. As a result of the changes, Scheme employers participating in the LGPS in Scotland will have to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to members of the CARE Scheme.
4. Scheme employers are also required to (or where there is no requirement, are recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the LGPS.
5. Overall, Scheme employers participating in the LGPS in Scotland:
 - i) are required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with:
 - regulation 58 of the LGPS (Scotland) Regulations 2014,
 - paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014
 - regulation 61 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (in respect of leavers between 1 April 2009 and 31 March 2015), and
 - regulation 105 of the Local Government Pension Scheme (Scotland) Regulations 1998 (in respect of leavers between 1 April 1998 and 31 March 2009);
 - ii) are recommended to formulate, publish and keep under review a Statement of Policy on one discretion under the Local Government Superannuation (Scotland) Regulations 1987 (in respect of leavers before 1 April 1998); and
 - iii) are (other than admission bodies¹) required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with regulation 51A of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, operative from 4 March 1998.

¹ Admission bodies can use the 1998 Discretionary Payments and Injury Benefits Regulations by analogy and, if they do so, they might wish to have a written policy.

6. The following notes set out the key discretions that apply under the above legislation. A full list of all discretions can be viewed at

<http://www.lgpsregs.org/index.php/scotland/admin-guides>, Appendix A, together with the footnotes throughout this paper, provides information on variations for certain protected members who have been compulsorily transferred to the LGPS i.e.

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- employees of the Scottish Environment Protection Agency who were transferred as a result of a relevant statutory transfer who, immediately before the transfer, were pensionable civil servants,
- former members (and employees who were eligible to be members) of the NHS Pension Scheme who were TUPE transferred to the employment of the governing body of a university or designated institution or to the employment of a board of management of a college of further education on 1 September 1996 or, in the case of a transfer to the governing body of the Robert Gordon University on 1 December 1996,
- employees of the Scottish Legal Services Ombudsman who were transferred to the Scottish Legal Complaints Commission on 1 October 2008
- employees of the Scottish Administration's Learning Connections Division who were transferred to Learning and Teaching Scotland on 1 April 2010,
- employees of the Care Commission, the Social Work Inspection Agency and Her Majesty's Inspectorate of Education who were transferred to Social Care and Social Work Improvement Scotland on 1 April 2011, and
- employees formerly entitled to membership of the Skills Development Scotland Co. Limited Retirement Benefit Scheme, the Scottish Enterprise Pension and Life Assurance Scheme or the Highlands and Islands Enterprise Superannuation Scheme who were transferred to the LGPS on 1 May 2010.

Summary of the key discretions to be exercised on and after 1 April 2015 in relation to active scheme members (including councillor members) and members (including councillor members) who cease active membership after 31 March 2015

7. By virtue of regulation 58 of the LGPS (Scotland) Regulations 2014 and paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 Scheme employers are required to prepare and publish a written policy in relation to seven specific discretions. These are:

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- i) whether, at full cost to the employer, to grant extra annual pension of up to £5,000 (figure at 1 April 2015²) to an active Scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency [regulation 30 of the LGPS (Scotland) Regulations 2014]

Tips:

Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on granting extra pension of up to £5,000 under the 2009 Scheme (in accordance with the LGPS (Administration) (Scotland) Regulations 2008). Employers may, therefore, wish to simply carry forward their basic existing policy, but suitably amended to refer to the LGPS (Scotland) Regulations 2014.

Employers considering granting 'straight' extra annual pension of up to £5,000 to employees in the 2015 Scheme will need to take a view on whether doing so could leave them open to challenge on age or gender discrimination grounds (as those not in the Pension Scheme tend to be younger employees and part-time female workers).

² The figure of £5,000 was the figure it were a pensioner

- ii) whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,500 (figure at 1 April 2015³) by making Additional Pension Contributions (APCs), to (voluntarily) contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC) [regulations 16(2)(e) and 16(4)(d) of the LGPS (Scotland) Regulations 2014]

Tip:

Note that the above discretion does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS (Scotland) Regulations 2014]. There may be some cases, even if it is not the employer's general policy to contribute to a SCAPC, where an employer might wish to do so. For example:

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1. Where:

- a) an active scheme member returns from a period of authorised leave of absence
- b) the member does not, within 30 days of returning from the leave of absence, make an election to buy-back the amount of pension 'lost' during that period of leave of absence
- c) the member subsequently makes an election to do so and it can be demonstrated that the reason for the member missing the original 30 day deadline was because the member had not been made aware of that deadline
- d) the election is made no more than, say, 6 months after the member returns from the period of leave of absence or such longer period as the employer may deem reasonable in any individual case.

Deleted: The circumstances where an employer might wish to extend the 30 day limit might include the cases set out below.

2. Where a member has a string of odd days of authorised unpaid leave of absence throughout the Scheme year (1 April to 31 March). In such a case the employer, instead of requiring separate elections to be made within 30 days of returning from each day of absence, might wish to extend the 30 day limit in relation to each odd day of absence to allow the member to make a single election within 30 days of the end of the Scheme year to cover each one of the absences.

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If the employer agrees to extend the 30 day limit in such cases, the employer would be required to contribute 2/3rds of the cost of the SCAPC.

It should be noted that any extra annual pension granted by the employer under a SCAPC arrangement would be subject to an actuarial reduction where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age.

It should also be noted that the amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (including a SCAPC arrangement where an employer is contributing 2/3^{ths} of the cost of purchasing pension 'lost' during a period of absence) reduces the amount of extra annual pension the employer could award under (i) above.

³ The figure of £6,500 will be increased each April (starting April 2016) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2015)

- iii) whether to permit flexible retirement for staff aged 55 or over who, with the agreement of the employer, reduce their working hours or grade [regulation 29(6) of the LGPS (Scotland) Regulations 2014] and, if so, as part of the agreement to permit flexible retirement:
- whether, in addition to the benefits the member has accrued prior to 1 April 2009 (which the member must draw), to permit the member to choose to draw
 - o all, part or none of the pension benefits they accrued after 31 March 2009 and before 1 April 2015, and / or
 - o all, part or none of the pension benefits they accrued after 31 March 2015 [regulations 11(2) and 11(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014], and
 - whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA)⁴ [regulation 3(5) of, and paragraph 2(1) of Schedule 2 to, the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, regulation 18(4) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and regulations 29(6) and 29(8) of the LGPS (Scotland) Regulations 2014]

Tips:

Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on flexible retirement for flexible retirements under the 2009 Scheme (in accordance with the LGPS (Administration) (Scotland) Regulations 2008). Employers may, therefore, wish to simply carry forward their basic existing policy, but suitably amended for post 31 March 2015 flexible retirement to reflect the above provisions.

If flexible retirement is agreed for a Scheme member aged 55 or over but under 60 who is subject to the 85 year rule and who, at the date of flexible retirement, has either met the 85 year rule or would have met the rule before age 60, there would be a strain on fund cost to be met by, and paid to the Pension Fund by, the employer in respect of the pension benefits paid following flexible retirement.

Where flexible retirement is agreed for an employee aged 55 or over but under Normal Pension Age the cost of waiving any actuarial reduction, in whole or in part, would have to be met by, and paid to the Pension Fund by, the employer.

⁴ NPA means the minimum of age 60 for those who are not members of the Learning Connections Division, or the Care Commission, or the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme to whom regulation 16A to 16D of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 apply and for whom the NPA for membership accrued prior to 1 April 2015 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, still linked to age 60.

Learning Connections Division, or the Care Commission, or the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme to whom regulation 16A to 16D of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 apply and for whom the NPA for membership accrued prior to 1 April 2015 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, still linked to age 60.

State pension age is currently age 65 for men. State pension age for women is currently being increased to be equalised with that for men. Women's State pension age will reach 65 by November 2018. The State pension age will then increase to 66 for both men and women from December 2018 to October 2020. Under the Pensions Act 2007 the State pension age is due to rise to 67 by April 2036 and to 68 by April 2046. The Chancellor of the Exchequer announced in the Autumn Statement 2013 that the Government intends to introduce legislation under which the SPA will be reviewed every Parliament. Based on the principle that people should expect to spend, on average, up to one third of their adult life in receipt of the State pension, this implies that the increase in State pension age to age 68 is likely to come forward from the current date of 2046 to the mid-2030s, and that the State pension age is likely to increase further to 69 by the late 2040s. For a full breakdown of State pension ages please see

<http://www.pensionsadvisoryservice.org.uk/state-pensions/know-your-state-pension-age>

- iv) whether, as the 85 year rule⁵ does not (other than on flexible retirement) automatically fully apply to members who would otherwise be subject to it⁶ and who, with the employer's consent, choose to voluntarily draw their benefits on or after age 55 and before age 60, to apply the 85 year rule to such members [paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]. Where the employer **does not do so**, then:
- a) if the member has already met the 85 year rule, the member's benefits are to be reduced in accordance with actuarial guidance issued by the Scottish Ministers (with the benefits from any pre 1 April 2008 membership for members who will not be 60 or more on 31 March 2020, and benefits from any pre 1 April 2020 membership for members who will be 60 or more on 31 March 2020, which would not normally have been subject to an actuarial reduction nonetheless being subject to a reduction calculated by reference to the period between the date the benefits are drawn and the day before age 60) [paragraphs 1(2) and (4) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014], or
 - b) if the member has not already met the 85 year rule, the member's benefits are to be reduced in accordance with actuarial guidance issued by the Scottish

⁵ If a member voluntarily draws benefits before their Normal Pension Age and they were a member of the LGPS on 1 December 2006, then some or all of their benefits could be protected from the normal actuarial reduction applied to benefits paid early under what is called the 85 year rule. The 85 year rule is satisfied if the member's age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length. Not all membership may count towards working out whether a member meets the 85 year rule – see the [85 year rule document](#) for more information.

⁶ The 85 year rule does not apply to former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration's Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme to whom regulation 16A to 16D of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 apply.

Ministers (with the reduction on that part of the member's benefits subject to the 85 year rule being calculated by reference to the period between the date the benefits are drawn and the day before age 60, or the date of attaining the 85 year rule, whichever is the later), and

- c) the employer can exercise a discretion to waive actuarial reductions (at cost to the employer) – see (v) below.

Tips:

Under the 2009 Scheme if an employer agreed to a member drawing benefits on or after age 55 and before age 60 and the member had met the 85 year rule or would have met it before age 60, this would have resulted in a strain on Fund cost being charged to the employer.

Under the 2015 Scheme, an employer can agree to a member drawing benefits on or after age 55 and before age 60 and, even if the member has met the 85 year rule or would have met it before age 60, there would be no strain on Fund cost charged to the employer unless the employer has agreed to apply the 85 year rule in the case in question. This means that employers may be prepared to consider granting more requests for early payment of benefits on or after age 55 and before age 60 (in the knowledge that, unless they also agree to apply the 85 year rule, there will be no strain on Fund cost to be met by the employer; the cost will be met by an actuarial reduction to the scheme member's benefits.

If the employer **does** agree to apply the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60 [paragraph 2(3) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014].

Applying the 85 year rule might be a mechanism employers would wish to consider to encourage members to retire early to, for example, help achieve a balanced age profile within the workforce or to avoid possible redundancies later (which have attendant greater costs). Whilst also exercising the discretion to waive actuarial reductions would be more expensive than just switching back on the 85 year rule, it would still (in nearly all cases) be less expensive than redundancy.

A half-way house would be to not apply the 85 year rule but to agree to waive some of the actuarial reduction that would otherwise be applied to the member's benefits (see (v) below). In this way the cost of drawing benefits early would be met in part by the scheme member (via an actuarial reduction to their benefits) and in part by the employer (via a strain on Fund charge).

- v) for active members voluntarily retiring on or after age 55 and before Normal Pension Age who make an election under regulation 29(5) of the LGPS (Scotland) Regulations 2014 (with their employer's consent if under age 60) to immediately draw benefits⁷, and for deferred members who make an election under regulation 29(5) of the LGPS (Scotland) Regulations 2014 (with their former employer's

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⁷ Including pre 1 April 2015 benefits – see regulation 11(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

consent if under age 60) to draw benefits⁸ (other than on ill health grounds) on or after age 55 and before Normal Pension Age, whether to:

- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to their benefits (accrued both pre 1 April 2015 and after 31 March 2015¹¹ [[regulations 3\(1\), \(5\) and \(12\) of, and paragraph 2\(1\) of Schedule 2 to, the LGPS \(Transitional Provisions and Savings\) \(Scotland\) Regulations 2014](#) and regulation 29(8) of the LGPS (Scotland) Regulations 2014]

vi) whether to agree¹² to an active member's request for early voluntary retirement on or after age 55 and before age 60 [[regulations 29\(5\) and 29\(13\) of the LGPS \(Scotland\) Regulations 2014](#)]

Tip: in preparing their policy in relation to this discretion employers should consider the information at (iv) above.

i) whether to agree¹³ to a deferred member's request for early payment of the deferred benefits (other than on ill health grounds) on or after age 55 and before age 60 [[regulations 29\(5\) and 29\(13\) of the LGPS \(Scotland\) Regulations 2014](#)]

Tip: in preparing their policy in relation to this discretion employers should consider the information at (iv) above.

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were **not** members of the LGPS before 1 December 2006 [Group 3 members], whether to:¶
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waive on compassionate grounds⁹, any actuarial reduction that would otherwise be applied to benefits, if any, accrued before 1 April 2015¹⁰ [regulations 3(1) and (5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 and regulations 30(5) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008], and / or¶
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waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2015 [regulation 29(8) of the LGPS (Scotland) Regulations 2014]¶
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b) **were** members of the LGPS before 1 December 2006 [Group 1 and Group 2 members] (i.e. those members falling within paragraph 3 of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014),

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8. The Scheme employer should preferably prepare and publish a written statement of its policy on the above matters before 1 April 2015 but must do so, and send a copy to the Pension Fund administering authority, by no later than 30 June 2015 [regulation 58(2) of the LGPS (Scotland) Regulations 2014].
9. The Scheme employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy the Scheme employer must publish the revised policy and send a copy to the Pension Fund administering authority within one month of the date the policy is revised [regulations 58(3) and (4) of the LGPS (Scotland) Regulations 2014].

⁸ Including pre 1 April 2015 benefits – see regulation 11(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

¹¹ Including Part D2 membership – see the [85 year rule document](#).

¹² [This discretion does not apply to former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration's Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme to whom regulation 16A to 16D of the LGPS \(Benefits, Membership and Contributions\) \(Scotland\) Regulations 2008, nor to civil servants transferred to the Scottish Environment Protection Agency or former NHS Scheme members who are covered by regulations 13 and 14 of the LGPS \(Transitional Provisions\) \(Scotland\) Regulations 2008 \(as such members have the automatic right to take benefits on or after age 55 and before age 60\).](#)

¹³ [See Footnote 13.](#)

10. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 58(5) of the LGPS (Scotland) Regulations 2014].

11. There are a number of other discretions which Scheme employers may exercise under the LGPS (Scotland) Regulations 2014 (see the full list at <http://www.lgpsregs.org/index.php/scotland/admin-guides>). There is, however, no requirement to have a written policy in respect of these but there are **six** in respect of which it would perhaps be appropriate for Scheme employers to have a written policy in order that members can be clear on the employer's policy on these matters. They are:

- i) whether, how much, and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2015 [regulation 17 of the LGPS (Scotland) Regulations 2014]

Tip: Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on SCAVCs under the 2009 Scheme (in accordance with the LGPS (Administration) (Scotland) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy, but suitably amended to reflect the regulations referred to above.

- ii) whether to permit a Scheme member to elect to transfer other pension rights into the LGPS if he / she has not made such an election within 12 months of joining the LGPS [regulation 98(6) of the LGPS (Scotland) Regulations 2014]

Tips:
Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on late elections under the 2009 Scheme (in accordance with the LGPS (Administration) (Scotland) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy on this matter.

There may be circumstances where it would be reasonable to accept a late election.

For example:

- where the member asked for transfer investigations to be commenced within 12 months of joining the LGPS but a quotation of what the transfer value will purchase in the LGPS has not been provided to the member within 11 months of joining the LGPS. The time limit for such a member to make a formal election to transfer pension rights into the LGPS could be extended to, say, one month beyond the date of the letter issued by the Pension Fund administering authority notifying the Scheme member of the benefits the transfer will buy in the LGPS;
- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);
- where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration.

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Accepting an option after 12 months can result in additional cost to the employer (e.g. where an employee opts to transfer in prior to a large salary rise / promotion / re-grading if the member has any pre 1 April 2015 membership, or where an employee opts to transfer in prior to early retirement on the grounds of redundancy, business efficiency or ill health.)

Deleted: Unlike under the 2009 Scheme, where the discretion to allow a late election rested solely with the employer, under the 2015 Scheme both the employer and the Pension Fund administering authority have to agree to the acceptance of a late election. If one agrees, and the other does not, the late election cannot be accepted.¶

iii) whether to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in Scotland following the cessation of employment (or cessation of a concurrent employment) after 31 March 2015 may elect not to have the deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership) [regulations 22(6A) and (6B) of the LGPS (Scotland) Regulations 2014]

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Tip:

There may be circumstances where it would be reasonable to accept a late election to retain separate benefits. For example:

- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);
- where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration;
- where the member has pre 1 April 2014 membership and the available evidence indicates that, due to maladministration, the member had not been informed of the implications of having benefits aggregated and would, in consequence, suffer a detriment to their pension benefits (for example, where member's whole-time equivalent pensionable pay on commencing with the employer is, in real terms after allowing for inflation, significantly less than the whole-time equivalent pensionable pay upon which the deferred benefits were calculated).

iv) whether to extend the 12 month time limit within which a scheme member who has a deferred LGPS benefit in Scotland following the cessation of an employment prior to 1 April 2015 may elect to have the value of the deferred benefits aggregated with their new LGPS employment in order to purchase an amount of CARE pension (where the member has not made an election aggregate within 12 months of commencing membership of the LGPS in the new employment).

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Tip:

There may be circumstances where it would be reasonable to accept a late election to retain separate benefits. For example:

- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post); or
- where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration.

- v) how the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension contribution band to which an employee has been allocated following a permanent material change to the member's terms and conditions of employment which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March) [regulations 9 and 10 of the LGPS (Scotland) Regulations 2014]

Tip: See the information on allocation to a contribution band in sections 2A, 2B, 4, 5 and 10 of the HR guide at <http://www.lgpsregs.org/index.php/scotland/scot-hr-payroll-guides>

- vi) whether or not, when calculating assumed pensionable pay when a member is:

- on reduced contractual pay or no pay on due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave (other than any part of that leave where the pensionable pay received is greater than the assumed pensionable pay for that part of the leave period), or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis [regulations 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) of the LGPS (Scotland) Regulations 2014].

Tip:

It is entirely at the employer's discretion whether or not to include in the calculation of assumed pensionable pay the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. Take, for example, the following two situations as examples:

- if a 'regular lump sum payment' is added back for a member on reduced contractual pay or no pay on due to sickness or injury, or absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave, or absent on reserve forces service leave, that member can finish up with a bigger pension accrual than if the member had not been absent and had, instead, been at work. Take the case where a member receives a £1,200 annual performance payment in May 2015 and goes onto reduced contractual pay due to sickness for the period 1 November 2015 to 31 December 2015,

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Summary of the discretions to be exercised on and after 1 April 2015 in relation to scheme members (including councillor members) who ceased active membership between 1 April 2009 and 31 March 2015

12. By virtue of regulation 61 of the LGPS (Administration) (Scotland) Regulations 2008 Scheme employers (employing authorities) are required to prepare and publish a written policy in relation to two specific discretions. These are:

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<#>whether to agree¹⁶ to a deferred member's request for early payment of the deferred benefits (other than on ill health grounds) on or after age 55 and before age 60 [regulations 29(5) and 29(13) of the LGPS (Scotland) Regulations 2014]

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- i) whether¹⁷ to grant applications for the early payment of deferred pension benefits on or after age 55 and before age 60 [regulation 30(2) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008]
- ii) whether, on compassionate grounds¹⁸, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65¹⁹ [paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 and regulation 30(5) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008]

Tip: Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on the above matters under the 2009 Scheme (in accordance with the LGPS (Administration) (Scotland) Regulations 2008). Scheme employers should ensure that their current policy is up to date.

- 13. The Scheme employer must prepare and publish a written statement of its policy on the above matters and must send a copy to the Pension Fund administering authority [regulation 61(2) of the LGPS (Administration) (Scotland) Regulations 2008].
- 14. The Scheme employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy the Scheme employer must publish the revised policy and send a copy to the Pension Fund administering authority within one month of the date the policy is revised [regulations 61(3) and (4) of the LGPS (Administration) (Scotland) Regulations 2008].
- 15. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 61(5) of the LGPS (Administration) (Scotland) Regulations 2008].

Summary of the discretions to be exercised on and after 1 April 2015 in relation to members who ceased active membership between 1 April 1998 and 31 March 2009

- 16. By virtue of regulation 105 of the Local Government Pension Scheme (Scotland) Regulations 1998 Scheme employers are required to have a policy in relation to two specific discretions. These are:
 - i) whether²⁰ to grant applications for the early payment of pension benefits on or after age 50²¹ and before age 60 [regulation 30(2) of the LGPS (Scotland) Regulations 1998], and

¹⁷ See Footnote 13.

¹⁸ There is no definition in the regulations of 'compassionate grounds'.

¹⁹ Age 60 for former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration's Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme to whom regulation 16A to 16D of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, and for civil servants transferred to the Scottish Environment Protection Agency and former NHS Scheme members who are covered by regulations 13 and 14 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008.

²⁰ See Footnote 13.

- ii) whether, on compassionate grounds²², to waive any actuarial reduction that would normally be applied to benefits which are paid before age 65²³ [regulation 30(5) of the LGPS (Scotland) Regulations 1998].

Tip: Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on the above matters under the 1998 Scheme (in accordance with the LGPS (Scotland) Regulations 1998). Scheme employers should ensure that their current policy is up to date.

17. The Scheme employer must prepare and publish a written statement of its policy on the above matters and must send a copy to the Pension Fund administering authority [regulations 105(1) and (3) of the Local Government Pension Scheme (Scotland) Regulations 1998].
18. The Scheme employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy the Scheme employer must send a copy to the Pension Fund administering authority within one month of the date the policy is revised regulations 105(1) and (4) of the Local Government Pension Scheme (Scotland) Regulations 1998].
19. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 105(6) of the Local Government Pension Scheme (Scotland) Regulations 1998].

Summary of the discretions to be exercised on and after 1 April 2015 in relation to scheme members who ceased active membership before 1 April 1998

20. Scheme employers (employing authorities) are recommended to formulate, publish and keep under review a Statement of Policy on whether to grant applications for the early payment of deferred pension benefits on or after age 50²⁴ and before age 65 on compassionate grounds²⁵ [regulation E2(6)(b) of the LGS (Scotland) Regulations 1987].

Tip: Scheme employers should, prior to 1 April 2015, already have prepared and published a policy on the above matter under the 1987 Scheme (in accordance with the LGS (Scotland) Regulations 1987). Scheme employers should ensure that their current policy is up to date.

Summary of the discretions to be exercised under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

²¹ It should be noted that benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.

²² There is no definition in the regulations of 'compassionate grounds'.

²³ See Footnote 17.

²⁴ It should be noted that benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, but there would be no Scheme sanction charge.

²⁵ There is no definition in the regulations of 'compassionate grounds'.

21. By virtue of regulation 51A of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, operative from 4 March 1998, Scheme employers (employing authorities), other than admission bodies²⁶, are required to formulate, publish and keep under review a Statement of Policy on:

- i) whether to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory week's pay limit of, currently, £475 per week (as at 6 April 2015) [regulation 4 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998]
- ii) whether to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay to an employee who is, or is eligible to be, a member of the LGPS and whose employment is terminated on the grounds of redundancy or in the interests of the efficient exercise of the employer's functions [regulations 34 and 35 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998]
- iii) whether to award a period of compensatory added years to an employee who is, or is eligible to be, a member of the LGPS and whose employment is terminated on the grounds of redundancy or in the interests of the efficient exercise of the employer's functions or, in the case of a joint appointment²⁷, because the other holder of the appointment has left it. The person must be aged 55 or over (or, if the member was in the LGPS on 5 April 2006, aged 50 or over), be under 65, and have been in, or eligible to be in, the LGPS for at least 5 years but less than 40 years. The maximum number of added years that can be granted is the shorter of the following periods:
 - ten years
 - a period which, when added to the period the employee has been in, or eligible to be in, the LGPS (before any pro-rata for part-time membership) does not exceed 40 years
 - a period equal to the period the employee has been in, or eligible to be in, the LGPS, or
 - a period equal to the time from the employee's early retirement to his / her 65th birthday (less the period of residual entitlement in cases where the employee has previously been awarded a period of compensatory added years in respect of an earlier termination).[Part III of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998]
- iv) where a period of compensatory added years has been awarded
 - how any surviving spouse's or civil partner's annual compensatory added years is to be apportioned where the deceased person is survived by more

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²⁶ Admission bodies can use the 2006 Compensation Regulations by analogy and, if they do so, they might wish to have a written policy.

²⁷ This relates to appointments which are a 'joint appointment' e.g. the former practice of jointly appointing a husband and wife as officers in charge of a children's or older peoples' home. It does not relate to job shares where two or more employees share the duties of a post but hold separate contracts of employment.

than one spouse or civil partner [regulation 20(2) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998]

- whether, if the spouse or civil partner of a person who ceased employment before 1 April 1998 remarries, enters into a civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be disapplied i.e. the spouse's or civil partner's annual compensatory added years will continue to be paid [regulations 20(4) and (6) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].
 - if, under the preceding decision, the employer's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation [regulation 20(4)(b) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].
 - whether, where the spouse or civil partner of a person who ceased employment before 1 April 1998 with an award of compensatory added years (CAY) remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partner's annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or cohabitation lasts, should be disapplied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them [regulations 20(5), (5A) and (6) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].
 - how, if compensatory added years were awarded to an employee who was not in the LGPS (because the employee had not joined or had opted out of the LGPS) the employer will decide to whom any children's annual compensatory added years payments are to be paid and, in such a case, how the annual added years will be apportioned amongst the eligible children [regulation 26(2) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].
- v) whether to make a lump sum payment to a member of the LGPS who has at least 2 years membership and whose employment is terminated on the grounds of ill health or infirmity of mind or body in circumstances where the member does not meet the criteria for an ill health pension under the LGPS. The payment can be an amount equal to one week's pay for every whole year of employment with the employer (subject to a maximum of 30 weeks' pay) [regulation 49B of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].

Tips:

Scheme employers (other than admission bodies) should, prior to 1 April 2015, already have prepared and published a policy on the above matters under the Discretionary Payments Regulations 1998. Scheme employers should ensure that their current policy is up to date.

A payment under (ii) cannot be made if the employer makes an award of:

- compensatory added years under Part III of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, or
- additional pension under regulation 30 of the LGPS (Scotland) Regulations 2014. Although regulation 30 of the LGPS (Scotland) Regulations 2014 is

22. Scheme employers (employing authorities) might also wish to formulate, publish and keep under review a Statement of Policy on:

i) how to calculate the amount of an injury award payable to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:

- suffer a reduction remuneration, or
- cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or
- die leaving a surviving spouse, civil partner or dependant, and

[regulations 38 to 44 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].

ii) whether to award a gratuity payment in respect of certain periods of non-pensionable service where a person dies in service, retires or is made redundant or retired in the interests of the efficient exercise of the employer's functions.

[regulations 45 to 49 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].

Tip: Scheme employers may have previously prepared and published a policy on the above matters under the Discretionary Payments Regulations 1998. Scheme employers should ensure that any policy on the above matters is up to date.

23. In formulating and reviewing its policy under the Discretionary Payments Regulations 1998, the Scheme employer:

- i) must have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
- ii) must be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs

[regulation 51A(5) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].

24. If, as a result of a review of their policy, a Scheme employer determines to amend its policy it must publish a written statement of the amended policy within one month of the date they determined to amend the policy [regulation 51A(3) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].

Effective date of changes in policy

27. Any change to the discretions exercised under the LGPS Regulations can take immediate effect from the date the Scheme employer agrees the change.

28. Any change to the discretions exercised under the Discretionary Payments Regulations 1998 cannot take effect until one month after the date the Scheme employer publishes a statement of its amended policy [regulation 51A(5) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998].

Disclaimer

29. This document has been prepared based on the LGPC Secretariat's understanding of the information presently available including the relevant Statutory Instruments governing the Local Government Pension Scheme, associated overriding legislation and relevant draft legislation. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the Local Government Association for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein.

Terry Edwards
Senior Pensions Adviser
10th April 2015

Deleted: 7th January

APPENDIX B	Early voluntary payment of deferred benefit			85 year rule	Normal Pension Age	Late retirement
SPECIAL CASES – leavers before 1/4/15	Earliest retirement age	Employer consent necessary for voluntary retirement before 60	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/15 membership	Actuarial increase for deferment of benefits after [age below]
Former NHS scheme members (see 9 and 14)	50 pre 1/4/09 leavers 55 leavers 1/4/09 to 31/3/15 (but 50 if member elected to draw deferred benefits before 1/4/10 – see 7A)	No	60	Yes but see 12	65	65
Civil Servants transferred to the Scottish Environment Protection Agency (see 10 and 14)	50 pre 1/4/09 leavers 55 leavers 1/4/09 to 31/3/15 (but 50 if member elected to draw deferred benefits before 1/4/10 – see 7A)	No	60	Yes but see 12	65	65
Former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration’s Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty’s Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme (see 11)	55	No	60	No	60	65

SPECIAL CASES – leavers and flexible retirements after 31/3/15	Early voluntary retirement / early voluntary payment of deferred benefit			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Employer consent to draw benefits required if employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/15 membership	Post 31/3/15 membership	Actuarial increase for deferment of benefits after [age below]
Former NHS scheme members	55 (see 6, 9 and 14)	No (see 1, 4, 6, 9)	60 for pre 1/4/15 membership (see 1, 4, 9) SPA (min 65) for post 31/3/15 membership (see 2, 8)	55 (see 4, 7, 9)	Yes (see 4, 7, 9)	60 for pre 1/4/15 membership (see 4, 7, 9) SPA (min 65) for post 31/3/15 membership (see 2, 7, 8)	Yes but see 13	65 (see 2, 4, 9)	SPA (min 65) (see 2, 8)	65 for pre 1/4/15 membership (see 2, 4, 9) SPA (min 65) for post 31/3/15 membership (see 2, 4, 5, 8)
Civil Servants transferred to the Scottish Environment Protection	55 (see 6, 9A and 14)	No (see 1, 6, 10)	60 for pre 1/4/15 membership (see 1, 10) SPA (min	55 (see 7, 10)	Yes (see 7, 10)	60 for pre 1/4/15 membership (see 7, 10) SPA (min	Yes but see 13	65 (see 2, 10)	SPA (min 65) (see 2, 8)	65 for pre 1/4/15 membership (see 2, 10) SPA (min

Agency			65) for post 31/3/15 membership (see 2, 8)			65) for post 31/3/15 membership (see 2, 7, 8)				65) for post 31/3/14 membership (see 2, 5, 8)
Former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration's Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme	55 (see 6)	No (see 1, 11)	60 for pre 1/4/15 membership (see 1, 11) SPA (min 65) for post 31/3/15 membership (see 2, 8)	55 (see 7)	Yes (see 7)	60 for pre 1/4/15 membership (see 1, 11) SPA (min 65) for post 31/3/15 membership (see 2, 7, 8)	No (see 3)	60 (see 1, 11)	SPA (min 65) (see 2, 8)	65 for pre 1/4/15 membership (see 2, 11) SPA (min 65) for post 31/3/15 membership (see 2, 5, 8)

Key:

1. Regulation 24(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014
2. Regulation 24(2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014
3. Regulation 24(4) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014
4. Regulation 24(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

5. Regulation 29(4) of the LGPS (Scotland) Regulations 2014
6. Regulation 29(5) of the LGPS (Scotland) Regulations 2014
7. Regulation 29(6) of the LGPS (Scotland) Regulations 2014
- 7A. Regulation 30(6) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008
8. Definition of normal pension age in Schedule 1 of the LGPS (Scotland) Regulations 2014
9. Regulation 14 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008
- 9A. Regulation 13 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008
10. Regulation 13 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008
11. Regulation 16A to 16D of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008
12. There is nothing in the regulations to say that the 85 year rule does not apply. However, paragraph 2.6 of the GAD guidance on Early Payment of Pension dated 28 March 2012 says “Members covered under Regulations 13 and 14 of the Transitional Provisions are entitled to unreduced benefits from age 60. The reduction factors applied to pensions taken before normal retirement age by such members should be applied with reference to age 60 rather than CRA or age 65, as appropriate.”
13. There is nothing in the regulations to say that the 85 year rule does not apply. However, we are awaiting the Scottish Ministers’ guidance on Early Payment of Pension which will, hopefully, confirm that for members to whom Regulations 13 and 14 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008 apply the reduction factors applied to pensions taken before normal retirement age should be applied with reference to:
 - > age 60 for service before 1 April 2015 (rather than CRA or age 65, as appropriate)
 - > State Pension Age, or if higher, age 65 for service on or after 1 April 2015.
14. Regulations 21 and 22 of the LGPS (Transitional Provisions) (Scotland) Regulations 1998 replaced the words “may elect” with “is entitled” in regulation 30 of the LGPS (Scotland) Regulations 1998. This meant that members had the right to draw deferred benefits under regulation 30 of the LGPS (Scotland) Regulations 1998 from age 50 without the need for employer consent. Thus, members who left prior to 1st April 2009 with a deferred benefit retain an age 50 earliest retirement age. However, there was nothing in the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 or the LGPS (Transitional Provisions) (Scotland) Regulations 2008 that specifically carried forward the age 50 protections. Under regulation 30 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 the earliest payment age was age 55. Regulation 24(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 carry forward the protection under regulation 22 of the LGPS (Transitional Provisions) (Scotland) Regulations 1998 (former members of the NHS Superannuation Scheme for Scotland). The protection was to have the right to draw deferred benefits before age 60 without the need for employer consent, but does not go as far as protecting the minimum age of 50 too for a member who left with a deferred benefit after 31st March 2009. However, the courts in the ECJ cases of Beckmann v Dynamco, Whicheloe Macfarlane and Martin v South Bank University cases have confirmed that rights under early retirement provisions transfer over under TUPE. Whether the former members of the NHS Superannuation Scheme for Scotland and the civil servants transferred to the Scottish Environment Protection Agency would have retained an age 50 ‘protected pension age’ under the NHS Pension Scheme or Principal Civil Service Pension Scheme if the conditions in Part 3 of Schedule 36 to the Finance Act 2004 are satisfied and, even if the member would have done so, whether that protection continues to apply is not clear given that (in England and Wales) DCLG have taken the view that the change from 50 to 55 introduced within regulation 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (i.e. the equivalent of regulation 30 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) was a

change upon which they consulted interested parties and which, in consequence of a lack of responses seeking protections beyond 31 March 2010, took the form of an agreed change to members' pension provision. Given this uncertainty, the entry in the table reflects the wording of the LGPS Regulations but it is for employers to decide, perhaps having taken legal advice, whether TUPE provides the members with an entitlement to an age 50 'protected pension age'.